

SCOTT N. SCHOOLS (SC 9990)  
United States Attorney

BRIAN J. STRETCH (CASBN 163973)  
Chief, Criminal Division

JOSEPH A. FAZIOLI (ILSBN 6273413)  
Assistant United States Attorney

150 Almaden Boulevard, Suite 900  
San Jose, California 95113  
Telephone: (408) 535-5061  
Facsimile: (408) 535-5081  
E-Mail: joseph.fazioli@usdoj.gov

Attorneys for the United States

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
KENNETH VAN AALSBURG, )  
 )  
Defendant. )

No. CR 07-00603 JW

STIPULATION AND [PROPOSED]  
ORDER CONTINUING STATUS  
HEARING AND EXCLUDING TIME  
UNDER THE SPEEDY TRIAL ACT

This matter is scheduled before the Court for status on November 19, 2007. The parties now jointly request that the November 19, 2007 status hearing be continued in order to allow the defense a further opportunity to review discovery. The United States has produced to defense counsel discovery materials related to defendant's alleged possession of child pornography. Defense counsel would like an additional opportunity to review discovery materials prior to the next calling of the case, and to discuss these materials with his client. In addition, the government intends to make available for defense counsel's review the images of alleged child pornography. This process of presenting these images for defense counsel's review has been complicated somewhat due to: (1) recent changes in the rules for discovery in child pornography cases; and (2) undersigned government counsel's unavailability due to his participation in the

1 recently completed trial of United States v. Dugan. Undersigned government counsel in fact was  
2 notified yesterday that the verdict in the Dugan case will be presented in Judge Whyte's  
3 Courtroom this upcoming Monday at 1:00 p.m. The reading of this verdict (and potential post-  
4 verdict proceedings in the event of any guilty verdict) therefore poses an unexpected scheduling  
5 conflict with the status conference in the above-captioned matter, currently scheduled for 1:30  
6 p.m.

7 Due to upcoming holidays, defense counsel's unavailability, and the anticipated time he  
8 needs to review/analyze the images of child pornography, the first mutually available date for  
9 both parties for have a status conference in this matter is January 14, 2008. The parties anticipate  
10 that if this matter were to be continued to January 14, 2008, the parties would be prepared on that  
11 date to either present a negotiated settlement to the court or, in the alternative, set the matter for  
12 trial.

13 In light of the above, the parties jointly request a continuance until January 14, 2008 to  
14 allow defense counsel the reasonable time necessary to confer further with his client and discuss  
15 the discovery materials in this case in order to effectively prepare. The parties agree, and the  
16 Court finds and holds, as follows:

17 1. The status hearing is continued to January 14, 2008.

18 2. The time between November 19, 2007 and January 14, 2008 is excluded under the  
19 Speedy Trial Act. The parties agree that the failure to grant the requested continuance would  
20 unreasonably deny defense counsel reasonable time necessary for effective preparation, taking  
21 into account the exercise of due diligence. Finally, the parties agree that the ends of justice  
22 served by granting the requested continuance outweigh the best interest of the public and the

23 //

24 //

25 //

26 //

27 //

28 //

1 defendant in a speedy trial and in the prompt disposition of criminal cases. 18 U.S.C. §  
2 3161(h)(8)(A).

3 IT IS SO STIPULATED

4 DATED: 11/16/07

/s/  
DANIEL L. BARTON  
Attorney for Defendant Van Aalsburg

7 DATED: 11/16/07

/s/  
JOSEPH A. FAZIOLI  
Assistant United States Attorney

9 IT IS SO ORDERED.

10 DATED: \_\_\_\_\_

\_\_\_\_\_  
JAMES WARE  
UNITED STATES DISTRICT JUDGE